



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0519; FRL-10024-19-Region 9]

Air Quality Implementation Plan; California; Mendocino County Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Mendocino County Air Quality Management District (MCAQMD or “District”) portion of the California State Implementation Plan (SIP). These revisions concern the District’s prevention of significant deterioration (PSD) permitting program for new and modified stationary sources of air pollution. We are approving these local rules pursuant to requirements under part C of title I of the Clean Air Act as amended in 1990 (CAA or the “Act”).

DATES: This rule will be effective on **[Insert date 30 days after date of publication in the *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2020-0519. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact

the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Amber Batchelder, EPA Region IX, 75

Hawthorne St., San Francisco, CA 94105; by phone: (415) 947-4174, or by email to

batchelder.amber@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us” and “our” refer to the EPA.

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Proposed Action

On February 22, 2021, the EPA proposed to approve the following rules into the MCAQMD portion of the California SIP.¹

Table 1 – Submitted Rules

Rule No.	Rule Title	Amended	Submitted
1-220	New Source Review Standards (Including PSD Evaluations)	4/7/2020	8/10/2020
1-230	Action on Applications	4/7/2020	8/10/2020

The EPA previously finalized a limited approval and limited disapproval of Rule 1-220 on July 3, 2017.² We listed the following two deficiencies in our final limited approval and limited disapproval of Rule 1-220:

- Rule 1-220 does not contain any provisions specifying that required air quality modeling shall be based on the applicable models, databases, and other requirements specified in part 51 Appendix W; therefore, the requirements of 40 CFR 51.160(f) and 51.166(l) have not been met.

¹ 86 FR 10524.

² 82 FR 30770.

- The requirements of 40 CFR 51.166(r)(2)³ have not been met because the rule does not include the necessary information about a source's obligations.

The District resolved the first deficiency by adding the required air quality modeling provisions to Rule 1-220 and addressed the second deficiency by revising Rule 1-230 to include information about a source's obligations under the CAA. We have determined that the amended sections of these rules satisfy the statutory and regulatory requirements for a PSD program as set forth in the applicable provisions of part C of title I of the Act and in 40 CFR 51.160-51.164 and 51.166.

Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one comment, which is included in the docket for this action. We do not consider this comment to be germane or relevant to this action, thus this comment is not adverse to this action. Moreover, the comment lacks the required specificity to the proposed SIP revisions and the relevant CAA requirements, and does not address the specific regulations or provisions in question, or recommend an action on the SIP submission different from what the EPA proposed. Therefore, we are finalizing our action as proposed.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. We continue to find that MCAQMD Rules 1-220 and 1-230 correct the previously identified deficiencies and fulfill all relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rules into the MCAQMD portion of the California SIP. The April 7, 2020 versions of Rules 1-220 and 1-230

³ The 2017 final rule stated incorrectly that the criteria in 40 CFR 51.166(r)(1) had not been met. Our proposal notice (81 FR 95074, December 27, 2016) and Technical Support Document (TSD) correctly noted that only the criteria in 40 CFR 41.166(r)(2) had not been met. See e.g., Section 4.2, number 15 on Page 18 of the TSD for the 2017 final action.

will replace the previously approved versions of the rules in the SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the MCAQMD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States

prior to publication of the rule in the ***Federal Register***. A major rule cannot take effect until 60 days after it is published in the ***Federal Register***. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: June 10, 2021.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart F – California

2. Section 52.220 is amended by adding paragraphs (c)(489)(i)(A)(5) through (6) and (c)(555) to read as follows:

§52.220 Identification of plan-in part.

* * * * *

(c) * * *

(489) * * *

(i) * * *

(A) * * *

(5) Previously approved on July 3, 2017, in paragraph (c)(489)(i)(A)(3) of this section and now deleted with replacement in (c)(555)(i)(A)(1), Rule 1-220, “New Source Review Standards (Including PSD Evaluations),” amended on April 7, 2020.

(6) Previously approved on July 3, 2017, in paragraph (c)(489)(i)(A)(4) of this section and now deleted with replacement in (c)(555)(i)(A)(2), Rule 1-230, “Action on Applications,” amended April 7, 2020.

* * * * *

(555) The following amended regulations were submitted on August 10, 2020 by the Governor’s designee.

(i) *Incorporation by reference.*

(A) Mendocino County Air Quality Management District.

(1) Regulation 1, Rule 1-220, “New Source Review Standards (Including PSD Evaluations),”

last amended on April 7, 2020.

(2) Regulation 1, Rule 1-230, “Action on Applications,” last amended April 7, 2020.

(B) [Reserved]

(ii) [Reserved]

3. Section 52.270 is amended by revising paragraph (b)(3) introductory text to read as follows:

§ 52.270 Significant deterioration of air quality.

* * * * *

(b) * * *

(3) The PSD program for Mendocino County Air Quality Management District, as incorporated by reference in §52.220(c)(489) and (c)(555) is approved under Part C, Subpart 1, of the Clean Air Act. However, EPA is retaining authority to apply §52.21 in certain cases. The provisions of §52.21 except for paragraph (a)(1) are therefore incorporated and made a part of the State plan for California for the Mendocino County Air Quality Management District for:

* * * * *

[FR Doc. 2021-13452 Filed: 6/24/2021 8:45 am; Publication Date: 6/25/2021]